

These are the tentative rulings for civil law and motion matters set for Friday, January 3, 2020, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Thursday, January 2, 2020. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: All telephone appearances are governed by Local Rule 20.8. More information is available at the court's website: www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER GLENN M. HOLLEY AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 31, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0074047 Huber Property Mgmt., Inc. vs. Hernandez-Gonzales, Alicia

Defendant Alicia Hernandez-Gonzales' motion to set aside default and default judgment is granted. Defendant adequately establishes excusable neglect pursuant to Code of Civil Procedure section 473(b). The default and default judgment entered December 9, 2019, are hereby set aside. Defendant shall file and serve her answer to the complaint on or before January 10, 2020.

2. M-CV-0075189 Kubota Credit Corporation, USA vs. Caliste, Larry Joseph

Plaintiff's application for writ of possession is granted.

Plaintiff establishes that it has the right to immediate possession of the claimed property identified in plaintiff's application, which is being wrongfully withheld by defendant. Code Civ. Proc. § 512.010. Plaintiff further establishes the probable validity of its claim. The clerk shall issue a writ of possession for the claimed property subject to plaintiff posting a \$10,000 undertaking. Code Civ. Proc. §§ 515.010(a), 512.060(a)(2). The court finds that plaintiff has not established that the value of the claimed property totals only \$12,179, as Exhibit C to the declaration of Gary Steen references only one item of equipment, the Kubota L250HST Tractor.

3. S-CV-0038637 King, Anna P. vs. Hyundai Motor America

The motions for attorneys' fees are continued to January 10, 2020, at 8:30 a.m. in Department 3 to be heard by the Honorable Michael W. Jones.

4. S-CV-0041543 Davidson, Richard vs. All Star Auto, et al

Motion to Compel Responses to Form Interrogatories

As a preliminary matter, although the motion to be relieved as counsel for defendant by attorney Nolan Del Campo was previously granted, the court has no record of having received proof of service of the signed order upon the client, and thus the order is not yet effective. Mr. Del Campo is directed to file proof of service of the signed order granting the motion to be relieved as counsel within 10 days of the hearing on this matter.

Plaintiff's motion to compel responses to form interrogatories from defendant Adreia Ikeva Brown ("Brown") is granted. Brown shall serve verified responses to the subject interrogatories, without objections, within 10 days of service of notice of entry of the court's ruling on this motion.

Plaintiff's request for issue, evidentiary or terminating sanctions is denied, as this relief was not requested in the notice of motion.

Plaintiff's request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4. Mr. Del Campo's request for sanctions is denied.

Motion to Compel Responses to Requests for Production of Documents

As a preliminary matter, although the motion to be relieved as counsel for defendant by attorney Nolan Del Campo was previously granted, the court has no record of having received proof of service of the signed order upon the client, and thus the order is not yet effective. Mr. Del Campo is directed to file proof of service of the signed order granting the motion to be relieved as counsel within 10 days of the hearing on this matter.

Plaintiff's motion to compel responses to requests for production of documents from defendant Adreia Ikeva Brown ("Brown") is granted. Brown shall serve verified responses to the subject requests, without objections, within 10 days of service of notice of entry of the court's ruling on this motion.

Plaintiff's request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2031.300(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4. Mr. Del Campo's request for sanctions is denied.

Motion to Deem Request for Admission Admitted

As a preliminary matter, although the motion to be relieved as counsel for defendant by attorney Nolan Del Campo was previously granted, the court has no record of having received proof of service of the signed order upon the client, and thus the order is not yet effective. Mr. Del Campo is directed to file proof of service of the signed order granting the motion to be relieved as counsel within 10 days of the hearing on this matter.

Plaintiff's motion to deem request for admission admitted is granted. Defendant Adreia Ikeva Brown ("Brown") is deemed to have admitted the matter specified in the subject request. Plaintiff is awarded sanctions in the amount of \$360 from defendant Brown only. Mr. Del Campo's request for sanctions is denied.

5. S-CV-0042799 Wright, Shirley, et al vs. Likely Land & Livestock Co., Inc.

Demurrer to Cross-Complaint

The parties' requests for judicial notice are granted. The court takes judicial notice of the existence of the declaration of John Flournoy, but not the truth of the matters stated therein.

Plaintiffs demur to the first cause of action for specific performance, alleged in the cross-complaint filed by Likely Land & Livestock Co., Inc. A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. The cross-complaint, when read as a whole, alleges sufficient facts to support cross-defendant's claim for specific performance.

Plaintiffs shall file and serve their answer to the cross-complaint on or before January 17, 2020.

Motion to Compel Responses of Plaintiff Albert Ristau

Defendant Placer Title Company's motion to compel responses of plaintiff Albert Ristau is granted. Plaintiff Albert Ristau shall serve full and complete, verified responses to the subject discovery requests, on or before January 17, 2020. Placer Title Company is awarded sanctions from plaintiff Albert Ristau and his counsel, jointly and severally, in the amount of \$900.

Motion to Compel Responses of Plaintiff Shirley Wright

Defendant Placer Title Company's motion to compel responses of plaintiff Shirley Wright is granted. Plaintiff Shirley Wright shall serve full and complete, verified responses to the subject discovery requests, on or before January 17, 2020. Placer Title Company is awarded sanctions from plaintiff Shirley Wright and her counsel, jointly and severally, in the amount of \$900.

6. S-CV-0042999 Govan, Douglas vs. Golfland Entertainment Centers, Inc.

The motion to dismiss is continued to January 24, 2020, at 8:30 a.m. in Department 3, to be heard by the Honorable Michael W. Jones.

7. S-CV-0043049 Am. Build. & Contractor's Supply vs. Superior Pres. & Constr.

Motion to Compel Responses to Requests for Production (Superior Preservation)

Plaintiff's motion to compel responses to request for production of documents, set one, is granted. Defendant Superior Preservation & Construction shall serve verified responses to the subject discovery, without objections, within 10 days of service of notice of entry of the court's order on this motion. Plaintiff's request for sanctions is denied, as the motion was unopposed. Code Civ. Proc. § 2031.300(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Motion to Compel Responses to Form Interrogatories (Superior Preservation)

Plaintiff's motion to compel responses to form interrogatories, set one, is granted. Defendant Superior Preservation & Construction shall serve verified responses to the subject discovery, without objections, within 10 days of service of notice of entry of the court's order on this motion. Plaintiff's request for sanctions is denied, as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Motion to Establish Admissions (Superior Preservation)

Plaintiff's motion to establish admissions is granted. Plaintiff's request for admissions, set one, are deemed admitted by defendant Superior Preservation & Construction. Plaintiff is awarded sanctions in the amount of \$310 from defendant Superior Preservation & Construction.

Motion to Compel Responses to Requests for Production (Kevin Hengl)

Plaintiff's motion to compel responses to request for production of documents, set one, is granted. Defendant Kevin Hengl shall serve verified responses to the subject discovery, without objections, within 10 days of service of notice of entry of the court's order on this motion. Plaintiff's request for sanctions is denied, as the motion was unopposed. Code Civ. Proc. § 2031.300(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Motion to Compel Responses to Form Interrogatories (Kevin Hengl)

Plaintiff's motion to compel responses to form interrogatories, set one, is granted. Defendant Kevin Hengl shall serve verified responses to the subject discovery, without objections, within 10 days of service of notice of entry of the court's order on this motion. Plaintiff's request for sanctions is denied, as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Motion to Establish Admissions (Kevin Hengl)

Plaintiff's motion to establish admissions is granted. Plaintiff's request for admissions, set one, are deemed admitted by defendant Kevin Hengl. Plaintiff is awarded sanctions in the amount of \$310 from defendant Kevin Hengl.

Motion to Compel Responses to Requests for Production (Stephanie Hengl)

Plaintiff's motion to compel responses to request for production of documents, set one, is granted. Defendant Stephanie Hengl shall serve verified responses to the subject discovery, without objections, within 10 days of service of notice of entry of the court's order on this motion. Plaintiff's request for sanctions is denied, as the motion was unopposed. Code Civ. Proc. § 2031.300(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Motion to Compel Responses to Form Interrogatories (Stephanie Hengl)

Plaintiff's motion to compel responses to form interrogatories, set one, is granted. Defendant Stephanie Hengl shall serve verified responses to the subject discovery, without objections, within 10 days of service of notice of entry of the court's order on this motion. Plaintiff's request for sanctions is denied, as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Motion to Establish Admissions (Stephanie Hengl)

Plaintiff's motion to establish admissions is granted. Plaintiff's request for admissions, set one, are deemed admitted by defendant Stephanie Hengl. Plaintiff is awarded sanctions in the amount of \$310 from defendant Stephanie Hengl.

8. S-CV-0043207 Singh, Jujaar vs. Sanghera, Avtar Singh

Defendant Avtar Singh Sanghera moves to dismiss this action on the ground of inconvenient forum.

The court may dismiss an action if it finds that “in the interest of substantial justice”, an action filed in California should be adjudicated elsewhere. Code Civ. Proc. § 410.30(a). Defendant bears the burden of proof in establishing grounds for dismissal. *Nat’l Football League v. Fireman’s Fund Ins. Co.* (2013) 216 Cal.App.4th 902, 926-927. Defendant must show that a suitable alternative forum exists, and that the balance of private and public interest factors makes it just that litigation proceed in the alternative forum. *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751.

Where plaintiff is a California resident, there is a strong presumption in favor of plaintiff’s choice of forum. *Nat’l Football League v. Fireman’s Fund Ins. Co.*, *supra*, 216 Cal.App.4th at 926-927. “[E]xcept in extraordinary cases a trial court has no discretion to dismiss an action brought by a California resident on grounds of forum non conveniens.” *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 858. Defendant does not establish that California would not provide an adequate forum in this case, or would have no interest in doing so. *Id.* at 859. The court finds that defendant has not satisfied his burden of proof for the purpose of the motion to dismiss. Additionally, although defendant’s motion is also titled as a motion to dismiss for lack of jurisdiction, any such argument has been waived as defendant’s moving papers do not address this ground for dismissal.

Based on the foregoing, defendant’s motion to dismiss is denied. Defendant shall file his answer or other responsive pleading on or before January 17, 2020.

9. S-CV-0043547 Wells Fargo Bank, N.A. vs. Sentient Law Group L.P., et al

Plaintiff Wells Fargo Bank, N.A.’s motion for discharge of liability based on interpleader is denied without prejudice.

As a preliminary matter, this court has subject matter jurisdiction over plaintiff’s action. *See Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42-43. Further, defendant Jacqueline Martinez (“Martinez”) has made a general appearance in the action, effectively waiving objections based on personal jurisdiction. *Greener v. Workers’ Compensation Appeals Board* (1993) 6 Cal.4th 1028, 1037. However, plaintiff’s moving papers raise certain issues which must be addressed before discharge may be granted. First, plaintiff’s notice of motion indicates that the subject funds total \$251,837.19, which plaintiff proposes to interplead. However, the declaration of Chere Tait indicates that the subject funds total \$264,337.19, and the opposition filed by Martinez indicates that the funds now total \$266,837.19. Further, plaintiff notes that it continues to pay accrued interest to the State Bar of New York on a monthly basis. Based on this obligation, it is unclear to the court whether the State Bar of New York is a potential claimant to some portion of the subject funds, and therefore entitled to notice of the current action and/or motion for discharge. Finally, plaintiff indicated in its moving papers that it would set forth a specific request for attorneys’ fees and costs in its reply, but has filed no reply brief. The court

declines to grant plaintiff's motion until such time as the foregoing issues have been adequately addressed.

Martinez's cross-motion for return of property is denied without prejudice, as such motion was not properly noticed pursuant to Code of Civil Procedure section 1005(b).

10. S-CV-0043577 First Investors Servicing Corporation vs. Davis, Ricky

Plaintiff's application for writ of possession is granted.

Plaintiff establishes that it has the right to immediate possession of the subject vehicle, which is being wrongfully withheld by defendant. Code Civ. Proc. § 512.010. Plaintiff further establishes the probable validity of its claim. The clerk is directed to issue a writ of possession for the subject vehicle, a 2014 Dodge Ram 2500, Vehicle Identification Number 3C6UR5CL0EG296528. The court finds that defendant currently has no interest in the subject vehicle, and therefore waives plaintiff's undertaking requirement. Code Civ. Proc. § 515.010(b). In order to prevent plaintiff from taking possession of the subject vehicle, defendant will be required to post an undertaking in the amount of \$33,000. Code Civ. Proc. §§ 515.010(b), 515.020.

11. S-CV-0043707 Jones, Lloyd Dylan vs. Hart, Lacy

Defendant's request for judicial notice is granted.

Defendant Lacy Hart demurs to plaintiff's complaint.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Plaintiff alleges that Lacy Hart, a probation officer, submitted a falsified or inaccurate report in connection with a criminal action involving plaintiff. As a probation officer, defendant is entitled to absolute immunity from claims relating to the preparation, provision and filing of presenting reports. *Demoran v. Witt* (9th Cir. 1986) 781 F.2d 155, 157-158; *Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 856. Additionally, the court takes judicial notice of the fact that the County has no record of a government claim filed by plaintiff. *See Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1752-1753. Accordingly, plaintiff fails to state a valid cause of action against defendant. *Gong v. City of Rosemead* (2014) 226 Cal.App.4th 363, 374.

Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Ass'n of Comm. Org. for Reform Now v. Dept. of Industrial Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing by plaintiff that a reasonable possibility exists that the defects can be cured by amendment. *Blank*

v. Kirwan (1985) 39 Cal.3d 311, 318. As the demurrer is unopposed, plaintiff fails to show that the complaint can be amended to change its legal effect. Further, the failure to oppose the demurrer may be construed as plaintiff having abandoned his claims. *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.

Based on the foregoing, defendant's demurrer to complaint is sustained without leave to amend.

12. S-PR-0009011 In re Charmaine Cushenbery Revocable Living Trust

The motion by Scott Bovee to be relieved as counsel for respondent Kathy Cushenbery is granted, effective upon the filing of proof of service of the signed order after hearing on respondent.

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